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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/645,073	05/13/1996	MAKOTO YOSHIOKA	1046.1133/JD	4943

21171 7590 01/07/2005

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EXAMINER

ELISCA, PIERRE E

ART UNIT PAPER NUMBER

3621

DATE MAILED: 01/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 08/645,073	Applicant(s) YOSHIOKA ET AL.	
	Examiner Pierre E. Elisca	Art Unit 3621	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12/16/2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. This Office action is in response to Applicant's RCE, filed on 12/16/2004.
2. Claims 1-25 are pending.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3, 6, 9, 10, 11, 12, 15, 16, 17, 18, 19 and 20-25 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Yamauchi et al. (U.S. Pat. No. 5,613,109) and Min (U.S. Pat. No. 5,175,716) in view of De Pommery et al. (U.S. Pat. No. 4,450,535) in view of Chigira ( U.S. Pat. No. 5,163,356).

As per claims 1, 3, 6, 9, 10, 11, 12, 15, 16, 17, 18, 19 and 20-25 Yamauchi substantially discloses a data reproduction that comprises a storage unit for storing element data or namely a CD-ROM (which is seen to read to read as Applicant's claimed invention wherein it is stated that a period reader reading an effective period stored on an individual self contained computer readable content medium, the content medium indicating the requestable period of time during which a content on the content medium can be served and sold);

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a comparator for judging data (see., abstract, col 3, lines 5-30). It is to be noted that Yamauchi fails to disclose that the judging data (or comparator or generator) is for judging present time that falls within the requestable period time.

However, Min discloses a comparator for comparing the numbers of the tracks based on the a first time period and second time period [ or effective time period] (see., col 4, lines 22-40, col 5, lines 11-30). Accordingly, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the reproduction data of Yamauchi by including the limitations detailed above as taught by Min because such modification would detect the number of tracks (or store data) moved.

Yamauchi and Min fail to disclose Applicant's newly added limitations wherein said a key to unlock content stored thereon. De Pommery discloses a method/system for distribution of articles or services, wherein a LOCKF area for validating the content of the creation memory and a key for protecting reading operations or lock or unlock content (see., col 6, lines 42-55, col 14, lines 56-68, col 15, lines 1-52, figs 6, 17, and 16). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Yamauchi and Min by including the locking content of de Pommery because such modification would provide prevent access to the medium.

Yamauchi, Min, and De Pommery fail to disclose Applicant's newly added limitation wherein said calendar sales. Chigira discloses a prediction for future sale based on a calendar information and a record of sale stored in a first memory (see., abstract, col 6, lines 10-40. It would have been obvious to a person of ordinary skill in the art at the time

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the invention was made to modify the teachings of Yamauchi, Min, and Pommery by including the limitation indicated above as taught by Chigira because this would determine future sale based on the calendar record of sale.

5. Claims 2, 4, 5, 7, 8, 13 and 14 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Yamauchi et al. (U.S. Pat. No. 5,613,109) in view of Min (U.S. Pat. No. 5,175,716), De Pommery et al. (U.S. Pat. No. 4,450,535) and further in view of Chigira.

**As per claims 2, 4, 5, 7, 8, 13 and 14 Yamauchi** substantially discloses a data reproduction that comprises a storage unit for storing element data or namely a CD-ROM (which is equivalent to Applicant's claimed invention wherein it is stated that a period reader reading a period stored on an individual self contained computer readable content medium, the content medium indicating a period of time during which a content on the content medium can be served and sold);

a comparator for judging data (see., abstract, col 3, lines 5-30). It is to be noted that Yamauchi fails to disclose that the judging data (or comparator or generator) is for judging present time that falls within the requestable period time.

However, **Min** discloses a comparator for comparing the numbers of the tracks based on the a first time period and second time period [ or effective time period] (see., col 4, lines 22-40, col 5, lines 11-30). Accordingly, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the reproduction

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data of Yamauchi by including the limitations detailed above as taught by Min because such modification would detect the number of tracks (or store data) moved.

**Yamauchi and Min** fail to disclose a locked content for locking area of the medium.

However, De Pommeroy discloses a method/system for distribution of articles or services, wherein a LOCKF area for validating the content of the creation memory and a key for protecting reading operations or lock or unlock content (see., col 6, lines 42-55, col 14, lines 56-68, col 15, lines 1-52, figs 6, 17, and 16). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Yamauchi and Min by including the locking content of de Pommeroy because such modification would provide prevent access to the medium.

Yamauchi, Min, and De Pommeroy fail to disclose this limitation wherein said calendar sales. Chigira discloses a prediction for future sale based on a calendar information and a record of sale stored in a first memory (see., abstract, col 6, lines 10-40). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Yamauchi, Min, and Pommeroy by including the limitation indicated above as taught by Chigira because this would determine future sale based on the calendar record of sale.

## REMARKS

6. In response to Applicant's arguments, Applicant argues that the prior art of record taken alone or in combination fail to anticipate or render obvious the recited feature:

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a. "content medium that can be served and sold". However, the examiner respectfully disagrees since an object or item that can be served, can also be sold.

b. Applicant also maintains that Yamauchi, Min, and DePommery cannot be combined, the Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

The rationale to modify or combine the prior art does not have to be expressly stated in the prior art; the rationale may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art, established scientific principles, or legal precedent established by prior case law. In *re Fine*, 837 F.2d 1071, 5USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). See also *In re Eli Lilli & Co.*, 902 F.2d 943, 14 USPQ2d 1741 (Fed. Cir. 1990) (discussion of reliance on legal precedent); *In re Nilssen*, 851 F.2d 1401, 7USPQ2d 1500 (Fed. Cir. 1988) (references do not have to explicitly suggest combining teachings); *Ex parte Clapp*, 227 USPQ 972 (Bd. Pat. App & Inter); and *Es parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993) (reliance on logic and sound scientific reasoning).

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Also in reference to Ex parte Levengood, 28 USPQ2d, 1301, the court stated that "Obviousness is a legal conclusion, the determination of which is a question of patent law.

Motivation for combining the teachings of the various references need not to explicitly found in the reference themselves, In re Keller, 642 F.2d 413, 208USPQ 871 (CCPA 1981). Indeed, the Examiner may provide an explanation based on logic and sound scientific reasoning that will support a holding of obviousness. In re Soli, 317 F.2d 941 137 USPQ 797 (CCPA 1963)."

c. "the automatic food vending machine of Chigira does not teach a requestable calender sales period of time stored on an individual self container computer". As indicated above, it is believed that Yamauchi, Min, and De Pommery fail to disclose this limitation wherein said calendar sales. Chigira discloses a prediction for future sale based on a calendar information and a record of sale stored in a first memory (see., abstract, col 6, lines 10-40). Accordingly, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Yamauchi, Min, and Pommery by including the limitation indicated above as taught by Chigira because this would determine future sale based on the calendar record of sale.

### ***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pierre E. Elisca whose telephone number is 703 305-3987. The examiner can normally be reached on 6:30 to 5:00.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 703 305-9769. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Pierre Eddy Elisca

**Primary Patent Examiner**

**January 05, 2005**